

ORDINANCE NUMBER O- 20653 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 01 2016

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 5, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 65.0201, 65.0202, AND 65.0203; REPEALING CURRENT SECTION 65.0204 AND ADDING NEW SECTION 65.0204; REPEALING CURRENT SECTION 65.0205 AND ADDING NEW SECTION 65.0205; REPEALING CURRENT SECTION 65.0206 AND ADDING NEW SECTION 65.0206; REPEALING CURRENT SECTION 65.0207 AND ADDING NEW SECTION 65.0207; ADDING NEW SECTION 65.0208; REPEALING CURRENT SECTION 65.0209 AND ADDING NEW SECTION 65.0209; REPEALING CURRENT SECTION 65.0210 AND ADDING NEW SECTION 65.0210; REPEALING CURRENT SECTION 65.0211 AND ADDING NEW SECTION 65.0211; REPEALING CURRENT SECTION 65.0212 AND ADDING NEW SECTION 65.0212; REPEALING CURRENT SECTION 65.0213 AND ADDING NEW SECTION 65.0213; REPEALING CURRENT SECTION 65.0214 AND ADDING NEW SECTION 65.0214; ADDING NEW SECTIONS 65.0215, 65.0216, 65.0217 AND 65.0218; REPEALING CURRENT SECTION 65.0219 AND ADDING NEW SECTION 65.0219; REPEALING CURRENT SECTION 65.0220 AND ADDING NEW SECTION 65.0220; REPEALING CURRENT SECTION 65.0221 AND ADDING NEW SECTION 65.0221; REPEALING CURRENT SECTION 65.0222 AND ADDING NEW SECTION 65.0222; REPEALING CURRENT SECTIONS 65.0223, 65.0224, 65.0225, 65.0226, 65.0227, AND 65.0234 ALL RELATING TO MAINTENANCE ASSESSMENT DISTRICTS.

WHEREAS, a Maintenance Assessment District (MAD or District) is a special assessment district in which property owners pay assessments to fund enhanced improvements and activities which confer special benefits to assessed properties; and

WHEREAS, several State statutes regulate the establishment and administration of special assessment districts such as MADs, and the City has codified the establishment and administration of such districts in Chapter 6, Article 5, Division 2 of the San Diego Municipal Code (MAD Procedural Ordinance); and

WHEREAS, the City now desires to amend the MAD Procedural Ordinance to, among other things, standardize the definitions and provide a clearer process for the formation, administration, and disestablishment of MADs; and

WHEREAS, the City Council intends to apply these new regulations to the City's existing Districts; and

WHEREAS, the term "existing district" is a defined term in the proposed amendments to the MAD Procedural Ordinance, and the current existing districts are the Adams Avenue Maintenance Assessment District, Barrio Logan Maintenance Assessment District, Bay Terraces – Honey Drive Maintenance Assessment District, Bay Terraces – Parkside Maintenance Assessment District, Bird Rock Maintenance Assessment District, Black Mountain Ranch North Maintenance Assessment District, Black Mountain Ranch South Maintenance Assessment District, Calle Cristobal Maintenance Assessment District, Campus Point Maintenance Assessment District, Camino Santa Fe Maintenance Assessment District, Carmel Mountain Ranch Maintenance Assessment District, Carmel Valley Maintenance Assessment District, Carmel Valley Neighborhood 10 Maintenance Assessment District, Central Commercial Maintenance Assessment District, City Heights Maintenance Assessment District, Civita Maintenance Assessment District, College Heights Maintenance Assessment District, Coral Gate Maintenance Assessment District, Coronado View Maintenance Assessment District, Del Mar Terrace Maintenance Assessment District, Eastgate Maintenance Assessment District, El Cajon

Boulevard Maintenance Assessment District, First San Diego River Improvement Project
Maintenance Assessment District, Gateway Center East Maintenance Assessment District,
Genesee/North Torrey Pines Road Maintenance Assessment District, Hillcrest Commercial Core
Maintenance Assessment District, Hillcrest Maintenance Assessment District, Kensington
Heights Maintenance Assessment District, Kensington Manor Maintenance Assessment District,
Kensington Park North Maintenance Assessment District, Kings Row Maintenance Assessment
District, La Jolla Village Drive Maintenance Assessment District, Liberty Station Maintenance
Assessment District, Linda Vista Maintenance Assessment District, Little Italy Maintenance
Assessment District, Mira Mesa Maintenance Assessment District, Miramar Ranch North
Maintenance Assessment District, Mission Boulevard Maintenance Assessment District, Mission
Hills Maintenance Assessment District, Newport Avenue Maintenance Assessment District,
North Park Maintenance Assessment District, Ocean View Hills Maintenance Assessment
District, Otay International Center Maintenance Assessment District, Pacific Highlands Ranch
Maintenance Assessment District, Park Village Maintenance Assessment District, Penasquitos
East Maintenance Assessment District, Rancho Bernardo Maintenance Assessment District,
Rancho Encantada Maintenance Assessment District, Remington Hills Maintenance Assessment
District, Robinhood Ridge Maintenance Assessment District, Sabre Springs Maintenance
Assessment District, Scripps – Miramar Ranch Maintenance Assessment District, Stonecrest
Maintenance Assessment District, Street Light District No. 1 Maintenance Assessment District,
Talmadge Maintenance Assessment District, Talmadge Park North Maintenance Assessment
District, Talmadge Park South Maintenance Assessment District, Tierrasanta Maintenance
Assessment District, Torrey Highlands Maintenance Assessment District, Torrey Hills
Maintenance Assessment District, University Heights Maintenance Assessment District,

Washington Street Maintenance Assessment District, and Webster/Federal Boulevard
Maintenance Assessment District; and

WHEREAS, the MAD Procedural Ordinance, as amended, incorporates certain
provisions of State law; and

WHEREAS, in any case of conflict between the MAD Procedural Ordinance, as
amended, and State law, the MAD Procedural Ordinance shall control; and

WHEREAS, it is the intent of the City Council that the MAD Procedural Ordinance, as
amended, comply with the State Constitution and the City Charter, and any interpretation should
be consistent with that intent; and

WHEREAS, nothing in the proposed amendments is intended to constitute an increase or
extension of any assessment as those terms are defined in California Government Code section
53750; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is
amended by amending sections 65.0201, 65.0202, and 65.0203, to read as follows:

§65.0201 Purpose and Intent; Citation of Division

- (a) One of the purposes of this Division is to allow for the formation of
districts in the City to fund *improvements* and *activities* through the levy
of *assessments* upon the *properties* that receive benefits from those
improvements. To accomplish this purpose, the City Council intends that
the definition of the terms *improvement* and *activities* be interpreted
liberally.
- (b) [No change in text.]

- (c) It is also the intent of this Division to provide a method for the City Council to authorize a non-profit corporation to assume responsibility for the administration and day to day management of a *district*.
- (d) This Division may be cited as the San Diego Maintenance Assessment District Procedural Ordinance.

§65.0202 Definitions

Each word or phrase that is defined in this Division appears in italicized letters.

For purposes of this Division, the following definitions shall apply:

“*Activities*” means, but is not limited to, all of the following that benefit *properties* in the *district*:

- (a) Promotion of *district* events;
- (b) Furnishing of music, programming, entertainment, or public art within the *district*;
- (c) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, landscaping, management of public spaces and other such services supplemental to those normally provided by the City; and
- (d) Other services provided for the purpose of conferring *special benefit* upon assessed *property* located in the *district*, including *administrative expenses*.

“*Administrative expense*” includes all incidental and personnel expenses incurred as a result of managing the *district*, including but not limited to *district* formation, *assessment* engineering, annual reporting, budget preparation and monitoring, *assessment* levying, invoicing, collections, information technology,

communications equipment, contract procurement, vendor invoice payments, inspection of *improvements* and *activities* as required by contract, personnel, preparation and routing of requests for Council action, legal assistance, rent, office space, miscellaneous office expenses (i.e., supplies and utilities), and any related overhead or supervisory function incurred by the City or *owners' association*.

“*Assessment*” means a levy for the purpose of acquiring, constructing, installing, or maintaining *improvements* and providing *activities* that will provide certain benefits to *properties* located within a *district*. *Assessments* levied under this Division are not special taxes.

“*Assessment engineer*” means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code) hired by a *district* formation committee or the City to prepare an *engineer's report*.

“*District*” means an area established, and not dissolved, pursuant to this Division, within which *property owners* pay *assessments* to fund *improvements* and *activities*.

“*District management plan*” means a plan that outlines the framework of the *district* and shall include, but is not limited to, all of the following:

- (a) A map of the proposed *district* in sufficient detail to allow property owners to reasonably determine whether a *property* is located within the *district* boundaries;
- (b) The name of the proposed *district*;

- (c) A description of the boundaries of the *district*, including the boundaries of any benefit zones;
- (d) The *improvements* and *activities* proposed for the *district* and the maximum cost thereof;
- (e) The proposed source or sources of financing;
- (f) Any proposed rules and regulations to be applicable to the *district*, including whether the City or an *owners' association* will administer the *district*;
- (g) A list of the *properties* proposed to be assessed, including the assessor's parcel numbers; and
- (h) Any other item or matter required by the City to be incorporated into the *district management plan*.

“*Engineer's Report*” means a report prepared by an *assessment engineer* in accordance with article XIII D, section 4(b) of the California Constitution, and shall include, but is not limited to:

- (a) The method and basis of levying the *assessment* in sufficient detail to allow each *property owner* to calculate the amount of the *assessment* to be levied against their *property*;
- (b) The proportionate *special benefit* derived by each *property*;
- (c) The total amount of all *special benefit* to be conferred upon the *properties*;
and
- (d) The total amount of general benefit.

“*Existing district*” means a *district* established prior to July 1, 2016.

“*Fiscal Year*” means a twelve-month period commencing on July 1 and ending on the following June 30.

“*Improvement*” means the acquisition, construction, installation, or maintenance of any tangible property including, but not limited to, the following:

- (a) Parking facilities;
- (b) Benches, booths, kiosks, display cases, pedestrian shelters, and signs;
- (c) Trash receptacles and public restrooms;
- (d) Lighting and heating facilities;
- (e) Decorations;
- (f) Parks and public spaces;
- (g) Fountains and monuments;
- (h) Planting areas;
- (i) Closing, opening, widening, or narrowing of existing streets;
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area;
- (k) Ramps, sidewalks, plazas, and pedestrian malls;
- (l) Rehabilitation or removal of existing structures; and
- (m) Design, construction and maintenance of community signs.

“*Owners’ association*” means a private non-profit entity which represents, and whose membership includes, the assessed *property owners* or *property owners’* representatives in a *district*. An *owners’ association* may be an existing non-profit entity or a newly formed non-profit entity.

“*Property*” means real property situated within a *district*.

“*Property owner*” or “*owner*” means any person or entity shown as the owner of *property* on the last equalized secured property tax assessment roll or otherwise known by the City to be the current owner of *property*.

“*Special benefit*” means a particular and distinct benefit over and above general benefits conferred on *properties* located in a *district* or to the public at large. *Special benefit* includes incidental or collateral effects that arise from certain *improvements* or *activities* of *districts* even if those incidental or collateral effects benefit *property* or persons not assessed. *Special benefit* excludes general enhancement of property value.

§65.0203 Non-exclusiveness of Remedies

The remedies provided in this Division for the enforcement of any *assessment* levied pursuant to this Division are not exclusive, and additional remedies may be provided at any time.

Section 2. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0204 and adding new section 65.0204, to read as follows:

§65.0204 Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the City Council to order the work, shall void or invalidate such procedure or any *assessment* or the cost of the work done.

Section 3. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0205 and adding new section 65.0205, to read as follows:

§65.0205 Alternative Financing Method; No Limit on Other Provisions of Law

This Division provides an alternative method of financing certain *improvements* and *activities*. The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for *improvements* or *activities* or the raising of revenue for the benefit of *properties*.

Section 4. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0206 and adding new section 65.0206, to read as follows:

§65.0206 Establishment of a District

A *district* may be established as provided in this Division, in the following manner:

- (a) A *district* formation committee, comprised of *property owners* proposing to form a *district*, working with the Mayor or Mayor's designee, shall formulate, vote upon, and submit a draft *district* management plan to the City for review and comment. Once City staff has commented, an independent *assessment engineer* hired by the City or the *district* formation committee will review the plan and prepare an *engineer's report* consistent with the draft *district* management plan, article XIII D, section 4(b) of the California Constitution, Sections 53750 through 53758 of the

California Government Code, the City of San Diego Municipal Code, and all other applicable laws.

- (b) The draft *district* management plan shall include the *improvements* and *activities* to be funded, the *assessment* methodology, any benefit zones within the *district*, the frequency of services, the boundaries of the *district*, and a statement regarding the desire for the *district* to be administered by the City or an *owners' association*.
- (c) City staff shall approve the draft *district* management plan and *engineer's report*. After approval of the draft *district* management plan and *engineer's report*, City staff shall inform the *district* formation committee that it may initiate a formal petition drive to demonstrate to the City that appropriate support exists to proceed with the *assessment* ballot proceeding for formation of the *district*.
- (d) The City may, at its sole discretion, determine whether or not the City will provide the initial funding for the costs of preparing the draft *district* management plan and *engineer's report*.
- (e) Upon the submission of a written petition supporting the approved *district* management plan, signed by the *property owners* who own at least 30 percent of the *property* in the proposed *district* or those *property owners* who would pay at least 30 percent of the proposed *assessments* to be generated in the proposed *district*, the City may initiate proceedings to establish a *district*. The petition shall contain a map showing the boundaries of the *district*, a general summary of the types of *improvements*

and *activities* that will be provided within the *district*, the exact cost to the respective *property owner* and their proportional weight relative to the total budget proposed for the new *district* which will fund the costs of providing such *improvements* and *activities*.

- (f) Prior to submitting the draft *district* management plan and petition to the City, the formation committee shall document that:
 - (1) At least two noticed and public meetings were held which included an agenda item for discussion of the *district* proposal;
 - (2) A notice was published in a newspaper of general circulation, or publication of similar distribution, which accurately summarized the draft *district* management plan and cost and gave notice of the two public meeting dates;
 - (3) Information about the proposed *district* was posted for a minimum of three weeks at a community-accessible public building within the proposed *district* boundary; and
 - (4) The officially recognized community planning committee for the area where the proposed *district* is located was informed about the proposed *district* formation.
- (g) Upon verification of the petition by City staff, the City Council may proceed with the formation of the *district* by the adoption of a resolution of intention expressing its intention to establish a *district*.
- (h) The resolution of intention described in subsection (g) above shall contain all of the following:

- (1) A brief description of the proposed *improvements* and *activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an *owner* to generally identify the nature and extent of the *improvements* and *activities* and the location and extent of the proposed *district*; and
- (2) A time and place for a public hearing on the establishment of the *district* and the levying of *assessments*, which shall be consistent with the requirements of San Diego Municipal Code sections 65.0209 and 65.0210.

Section 5. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0207 and adding new section 65.0207, to read as follows:

§65.0207 Engineer's Report

The *engineer's report* shall contain all of the following:

- (a) A map of the *district*.
- (b) The name of the proposed *district*.
- (c) A description of the boundaries of the proposed *district*, including the boundaries of any benefit zones, in a manner sufficient to identify the affected *properties*. Nothing in this Division prohibits the boundaries of a *district* created pursuant to this Division to overlap with other assessment districts established pursuant to other provisions of law including, but not

limited to, the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code section 36500 *et seq*, or the Property and Business Improvement District Law of 1994, California Streets and Highways Code section 36600 *et seq*.

- (d) The general description of *improvements* and *activities* proposed and their estimated maximum cost for each fiscal year.
- (e) The estimated total amount proposed to be expended for administration and operation of the *district* for each fiscal year.
- (f) The proposed source or sources of financing including the proposed method and basis of levying the *assessment* in sufficient detail to allow each *property owner* to calculate the amount of the *assessment* to be levied against their *property*.
- (g) A statement that the *district* will continue until it is disestablished pursuant to San Diego Municipal Code section 65.0221.
- (h) A separation and quantification of the *special benefits* and general benefits, and the proportionate *special benefit* derived by each assessed *property*, determined in relationship to the entirety of the cost of providing the *improvements* and *activities*.
- (i) A list of the *properties* to be assessed.
- (j) Any other item or matter required to be incorporated by the Council, the San Diego Municipal Code, or any other applicable law.

Section 6. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by adding a new section 65.0208, to read as follows:

§65.0208 Notice of Proposed Assessments; Public Hearing

If the City Council proposes to levy a new or increased *assessment*, the notice, protest, and hearing procedure shall comply with California Government Code section 53753. There shall be no statements in favor or in opposition by the City, *district* proponents, or *district* opponents contained in or accompanying the notice and ballot materials.

Section 7. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0209 and adding a new section 65.0209, to read as follows:

§65.0209 Formation of a District

(a) Following a public hearing in which there is no majority protest, as that term is defined in California Government Code section 53753(e), the City Council may decide to establish the proposed *district*. If the City Council decides to establish the proposed *district*, it shall do so by adopting a resolution of formation that shall contain all of the following:

- (1) A brief description of the proposed *improvements* and *activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*, which may be made by reference to any plan or map that is on file with the City Clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an *owner* to generally identify the nature and extent of the

improvements and activities and the location and extent of the proposed *district*.

- (2) The number, date of adoption, and title of the resolution of intention.
 - (3) The time and place where the public hearing was held concerning the establishment of the *district*.
 - (4) A statement that there was no majority protest.
 - (5) A statement that the *properties* in the *district* established by the resolution shall be subject to any future amendments to this Division.
 - (6) A statement that the *improvements and activities* to be conferred on *properties* in the *district* will be funded by the levy of the *assessments*.
 - (7) A statement that the revenue from the levy of *assessments* within a *district* shall not be used to provide *improvements or activities* outside the *district* or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning establishment of the *district*.
 - (8) A finding that the *property* within the area of the *district* will receive *special benefits* as a result of the *improvements and activities* funded by the proposed *assessments*.
- (b) Prior to adopting the resolution of formation, the City Council may modify the *engineer's report*, or any portion thereof, so long as the modification

does not result in any *property owner* paying a higher *assessment* than indicated on that *property owner's* ballot or result in an *assessment* being levied on any *property* for which the *property owner* was not balloted.

- (c) The adoption of the resolution of formation shall constitute the levy of an *assessment* in each of the fiscal years for the life of the *district*.
- (d) The *improvements* and *activities* in the *district* may not commence any sooner than six months after City Council adoption of the resolution of formation so that the necessary amount of *assessment* funds may accrue to implement the *improvements* and *activities*.

Section 8. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0210 and adding a new section 65.0210, to read as follows:

§65.0210 City Clerk to Record Notice and Map of District

Following adoption of a resolution of formation pursuant to San Diego Municipal Code section 65.0209, the City Clerk shall record a notice and map of the *district*.

Section 9. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0211 and adding a new section 65.0211, to read as follows:

§65.0211 Existing Districts

Every *existing district* is declared valid, effective, and in compliance with this Division. *Existing districts* are subject to this Division rather than any provision of prior law. Adoption of a resolution levying *assessments* in an *existing district*

for a fiscal year beginning on or after July 1, 2016 shall authorize and constitute the levy of *assessments* for the life of the *existing district*.

Section 10. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0212 and adding a new section 65.0212, to read as follows:

§65.0212 Property Owner Representatives

- (a) *Property owners* may establish representatives for the purposes of communicating with the City on matters within their *district*.
- (b) In the event a *district* is managed by the City and the *district's* boundaries are substantially the same as the boundaries of a community represented by a community planning group that has been established under applicable City guidelines, the community planning group shall be the preferred *property owner* representative for the *property owners* within the *district* for the purposes of Chapter 6, Article 5, Division 2. The community planning group may form a committee and designate that committee as the *property owner* representative in lieu of the community planning group acting as the *property owner* representative.
- (c) In the event the boundaries of a *district* managed by the City are substantially not the same as the boundaries of an established community planning group, the *property owners* within the *district* may establish their own advisory group made up of designated representatives.

Section 11. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0213 and adding a new section 65.0213, to read as follows:

§65.0213 Collection of Assessments

The collection of the *assessments* levied pursuant to this Division shall be made at the time and in the manner set forth by the City Council in the resolution of formation described in San Diego Municipal Code section 65.0209. A method for charging interest and penalties for delinquent payments of *assessments* may also be prescribed in the resolution of formation. *Assessments* may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for *assessments* levied pursuant to this Division may be charged interest and penalties.

Section 12. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0214 and adding a new section 65.0214, to read as follows:

§65.0214 Validity of Assessments; Contests

The validity of an *assessment* levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the *district* and levying the *assessment* is adopted pursuant to San Diego Municipal Code section 65.0209 or, in the case of *existing districts*, upon adoption of the resolution pursuant to San Diego Municipal Code section 65.0211. Any appeal from a final judgment in any action

or proceeding shall be perfected by the appellant within 30 days after the entry of judgment.

Section 13. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by adding new sections 65.0215, 65.0216, 65.0217, and 65.0218, to read as follows:

§65.0215 District Modification; Public Hearing Required

- (a) The City Council may modify a *district* by adopting a resolution after conducting one public hearing on the proposed modifications. The City Council may only make minor modifications to the *improvements* and *activities* to be funded with the revenue derived from the levy of the *assessments* to the extent that those minor modifications are consistent with the *engineer's report*. The City Council may modify the boundaries of the proposed *district*, but only if the modification does not result in additional *property* being included in the proposed *district*. Notice of the public hearing and the proposed modifications shall be accomplished by a first-class mailing to all affected *property owners* of the resolution of intention to modify the *district*, as well as an official notice of the public hearing regarding the proposed modifications. If the modification includes the levy of a new or increased *assessment*, as defined in California Government Code section 53750, or if the modification is not consistent with the *engineer's report*, then the City Council shall comply with California Government Code section 53753.
- (b) The City Council shall adopt a resolution of intention to modify the *district* which states the proposed modification prior to the public hearing.

The public hearing shall be held not more than 90 days after the adoption of the resolution of intention to modify the district and not less than 45 days after the mailing of the notice as referenced in section 65.0215(a).

§65.0216 Establishment, Modification, or Disestablishment of Benefit Zones

All provisions of this Division applicable to the establishment, modification, or disestablishment of a *district* apply to the establishment, modification, or disestablishment of benefit zones. In order to establish, modify, or disestablish a benefit zone, the Council shall follow the procedure to establish, modify, or disestablish a *district*.

§65.0217 Administration by an Owners' Association

(a) Consistent with California Streets and Highways Code section 36614.5, the *owners' association* is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. An *owners' association* shall comply with the Ralph M. Brown Act, California Government Code section 54950 *et seq.*, at all times when matters within the subject matter of the *district* are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code section 6250 *et seq.*, for all documents relating to *improvements* and *activities* of the *district*.

Board members, officers, and members of the *owners' association* are intended and understood to represent and further the interest of the *property owners* located within the *district*. Each *property owner* or *property owner's* representative paying the *assessment* has the right to

vote in, and seek nomination in, annual elections to the board of directors of the *owners' association*.

- (b) If the City Council determines that the *district* will be administered by an *owners' association*, then the City Council may adopt a resolution approving an agreement with an *owners' association* and stating that an *owners' association* shall be responsible for administering all contracts necessary to provide the *improvements* and *activities* within the *district* as well as managing the day to day operations of the *district*.
- (c) Upon the submission of a written petition, signed by the *property owners* who own at least 30 percent of the *property* in the *district* or those *property owners* who pay at least 30 percent of the *assessments* generated in the *district*, the City may initiate proceedings to change the administrator of a *district*. If the *district* is currently administered by the City, the petition shall include a statement that the *property owners* desire to have an *owners' association* administer the *district*. If the *district* is currently administered by an *owners' association*, the petition will include a statement as to whether the *property owners* desire the City or another *owners' association* to administer the *district*.
 - (1) After City staff verifies the petition sufficiency, the City Council may adopt a resolution of intention expressing its intention to change administrators of the *district*. If the *district* is currently administered by an *owners' association*, the resolution of intention shall include a statement seeking applicants from non-profit

corporations who desire to act as the *district's owners' association*.

The resolution of intention shall also set forth a time and place for a public hearing on the matter of changing the administrator for the *district*.

- (2) After the public hearing, the City Council may, but is not required to, change the administrator for the *district* by the adoption of a resolution changing administrators.
- (3) If there is any gap between *owners' associations* in administration of a *district*, the City shall administer the *district* until the new *owners' association* takes over administration.
- (d) Nothing in this section shall be construed as to limit the City's ability to change the administrator for the *district* at any time without a petition of the *property owners*.

§65.0218 Terms of Agreement between the City and the Owners' Association

- (a) Notwithstanding any other provision of the San Diego Municipal Code, the agreement between the City and the *owners' association* for administration of the *district* may be awarded without a competitive process.
- (b) The agreement with the *owners' association* shall require the *owners' association* to indemnify, defend, and hold the City free and harmless from and against any and all claims, demands, liens, or judgments for death of or injury to any person or damage to any property whatsoever alleged to be caused, or caused, by any act or omission of the *owners'*

association or any officer, contractor, agent, or employee of the *owners' association*.

- (c) The agreement shall require the *owners' association* to obtain a comprehensive public liability insurance policy satisfactory to the City Manager and the City Attorney, naming the City as an additional insured. The *owners' association* shall provide the City Manager a copy of a certificate of such insurance each year and, upon request, shall provide the City Manager a complete copy of the insurance policy.
- (d) The agreement shall require the *owners' association* to maintain worker's compensation insurance for its employees.
- (e) The agreement shall provide that neither the *owners' association* nor any of its board members shall have a financial interest in any contract awarded for the *district*.
- (f) The agreement shall provide that the *owners' association* agrees to conduct at least one noticed meeting per year which shall include the *property owners*, any applicable property owners' designated representatives pursuant to San Diego Municipal Code section 65.0212, and City staff, to discuss the budget, *improvements*, and *activities* for the following fiscal year.
- (g) The agreement shall require the *owners' association* to hold at least three other noticed meetings per year, in addition to the one required in section 65.0218(f), open to the public and *property owners* within the *district* to receive comments on all matters related to the *district*, including input on

bids or proposals received by the *owners' association* for any contracts for *improvements* and *activities* of the *district*, evaluation of the performance of any contractor for the *district*, and advice to the *owners' association* regarding the *improvements* and *activities* for the *district*.

(h) The agreement shall require the *owners' association* to submit to the City Manager a prospective annual report pursuant to section 65.0220 for the *improvements* and *activities* for the *district* no later than April 1 of each year for the following *fiscal year*. The City Manager may modify the annual budget prior to submitting it to the City Council for consideration.

(i) The agreement shall require the *owners' association* to maintain separate books and records for the *district* which shall be available for audit at any time during normal business hours and as often as the City deems necessary. All records shall be made available within the City of San Diego, and the City or its designee shall be allowed to audit, examine, and make excerpts from such data pertaining to all matters covered by the agreement. The *owners' association* shall maintain such books and records for a period of three years following completion of the agreement. The *district* shall pay for the costs of any audit performed by or at the direction of the City.

(j) The agreement shall require the *owners' association* to timely provide an audited financial statement of all reimbursements and working capital advances paid to the *owners' association* with *district* funds within the timeframe specified in the agreement. The financial statements must be

prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an independent Certified Public Accountant (CPA) as selected or approved by the City in accordance with Generally Accepted Auditing Standards (GAAS).

- (k) The agreement shall provide that failure of the *owners' association* to comply with any terms or conditions of the agreement may result in termination of the agreement.
- (l) The agreement shall provide that if the *owners' association* receives revenue directly generated by *activities* carried out with any *district assessment* funds, then a portion of that revenue must be returned to the *district* account based on the *district's* participation in the funding of the activity generating the revenue.
- (m) The agreement shall have a term not to exceed five years.
- (n) The agreement shall allow the City Manager to terminate the agreement for cause with 30 days' written notice to the *owners' association*. The City Council may terminate the agreement for convenience by resolution after first adopting a resolution of intention to terminate and giving 30 days' written notice of a public hearing on the matter to the *owners' association*.

Section 14. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0219 and adding a new section 65.0219, to read as follows:

§65.0219 Meetings between City and Property Owners; Notice

- (a) Representatives of the City shall participate in or conduct at least one publicly noticed meeting with the *property owner* representatives of the *district* or, absent *property owner* representatives, the *property owners* within each *district* to discuss the budget, *improvements*, and *activities* for the following *fiscal year*.
- (b) For any *contracts* awarded by the City, or *activities* provided by the City, or *improvement* installed or provided by the City pursuant to this Division, representatives of the City should meet on a regular basis with the advisory group or, absent an advisory group, *property owners* within the *district* to evaluate the performance of the contractor or the City and to advise the representatives of the City regarding *improvements* and *activities* for each *district*.
- (c) Upon receipt of bids or proposals for a *contract* for *improvements* or *activities*, representatives of the City should meet with the *property owner* representatives of the *district* or, absent *property owner* representatives, the *property owners* within the *district* to review the bids or proposals.

Section 15. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0220 and adding a new section 65.0220, to read as follows:

§65.0220 Annual Report

- (a) The City Council shall approve a prospective annual report for each *fiscal year*, except the first year, for which *assessments* are to be collected to pay the costs of the *improvements* and *activities* described in the report.
- (b) The report shall be consistent with the *engineer's report*, filed with the City Clerk after City Council approval but prior to August 10 each year, refer to the *district* by name, specify the *fiscal year* to which the report applies, and, with respect to that *fiscal year*, shall contain all of the following information:
 - (1) The *improvements* and *activities* to be provided for that fiscal year;
 - (2) An estimate of the cost of providing the *improvements* and *activities* for that fiscal year;
 - (3) The method and basis of levying the *assessment* in sufficient detail to allow each *property owner* to estimate the amount of the *assessment* to be collected from him or her for that fiscal year;
 - (4) The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year;
 - (5) The estimated amount of any contributions to be made from sources other than *assessments* collected pursuant to this Division;
and
 - (6) A list of parcels within the *district* as indicated on the last equalized secured property tax assessment roll.

- (c) The City Council may approve the report as filed or may modify any portion of the report and approve it as modified.

Section 16. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0221 and adding a new section 65.0221, to read as follows:

§65.0221 Disestablishment of District; Procedures

- (a) Any *district* established pursuant to the provisions of this Division may be disestablished by resolution of the City Council after a public hearing on the disestablishment of the *district*.
- (b) The City Council may, at its sole discretion, initiate the process to dissolve a *district*.
- (c) Section 65.0221(b) notwithstanding, *property owners* interested in dissolving a *district* shall provide a written petition to the City Manager verifying that *property owners* who own at least 30 percent of the *property* in the *district* or those *property owners* who pay at least 30 percent of the *assessments* generated in the *district*, support dissolution of the *district*.
 - (1) The petition shall contain the name, signature, address, and parcel number of each *property owner* signing the petition. The City Council will not act on a resolution to dissolve a *district* until the City Manager or his designee has verified the contents of the petition.
 - (2) All costs of mailing and printing the petition, and all costs incurred by the City in administering, mailing, printing, and tabulating the

petition and providing notice, shall be paid from *district assessments*.

- (d) Upon verification of the petition, the City Council shall adopt a resolution noticing the public hearing on the subject of dissolution. The resolution shall state the time and place of the public hearing and shall contain a proposal to dispose of any assets acquired with the revenues of the *assessments* levied within the *district*. The notice of the hearing on disestablishment shall be given by mail to the *owner* of each *property* subject to *assessment* in the *district*. The City Council shall conduct the public hearing not less than 30 days after the mailing of the notice to the *property owners*. The public hearing shall be held not more than 60 days after the adoption of the resolution noticing the public hearing.

Section 17. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing current section 65.0222 and adding a new section 65.0222, to read as follows:

§65.0222 Disestablishment; Refund of Assessments

Upon disestablishment of the district and after all outstanding debts, including administrative costs incurred on behalf of the *district* and the costs of disestablishing the *district*, are paid, any remaining revenues derived from the levy of *assessments*, or derived from the sale of assets acquired with the revenues, shall be refunded to the *property owners* then located within the *district* in which *assessments* were levied. Such refunds shall be distributed by applying the same method and basis that was used to calculate the *assessments* collected in the fiscal

year in which the *district* is disestablished. If the disestablishment occurs before an *assessment* is collected for the fiscal year, the method and basis that was used to calculate the *assessments* collected in the immediate prior fiscal year shall be used to calculate the amount of any refund. All outstanding *assessment* revenue collected after disestablishment or expiration shall be spent on *activities* specified in the *engineer's report*. All general benefit contributions shall be returned to their originating fund. Interest earned on any reserve shall be returned to the City's originating fund.

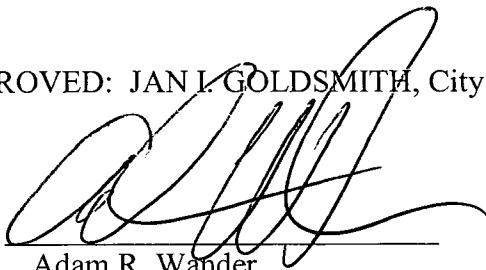
Section 18. That Chapter 6, Article 5, Division 2 of the San Diego Municipal Code is amended by repealing sections 65.0223, 65.0224, 65.0225, 65.0226, 65.0227, and 65.0234.

Section 19. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 20. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Adam R. Wander
Deputy City Attorney

ARW:mcm
04/12/2016
Or.Dept: Econ. Devel.
Doc. No.: 1260559

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 24 2016.

ELIZABETH S. MALAND
City Clerk

By *Mary Stuard*
Deputy City Clerk

Approved: 5/31/16
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 5, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 65.0201, 65.0202, AND 65.0203; REPEALING CURRENT SECTION 65.0204 AND ADDING NEW SECTION 65.0204; REPEALING CURRENT SECTION 65.0205 AND ADDING NEW SECTION 65.0205; REPEALING CURRENT SECTION 65.0206 AND ADDING NEW SECTION 65.0206; REPEALING CURRENT SECTION 65.0207 AND ADDING NEW SECTION 65.0207; ADDING NEW SECTION 65.0208; REPEALING CURRENT SECTION 65.0209 AND ADDING NEW SECTION 65.0209; REPEALING CURRENT SECTION 65.0210 AND ADDING NEW SECTION 65.0210; REPEALING CURRENT SECTION 65.0211 AND ADDING NEW SECTION 65.0211; REPEALING CURRENT SECTION 65.0212 AND ADDING NEW SECTION 65.0212; REPEALING CURRENT SECTION 65.0213 AND ADDING NEW SECTION 65.0213; REPEALING CURRENT SECTION 65.0214 AND ADDING NEW SECTION 65.0214; ADDING NEW SECTIONS 65.0215, 65.0216, 65.0217 AND 65.0218; REPEALING CURRENT SECTION 65.0219 AND ADDING NEW SECTION 65.0219; REPEALING CURRENT SECTION 65.0220 AND ADDING NEW SECTION 65.0220; REPEALING CURRENT SECTION 65.0221 AND ADDING NEW SECTION 65.0221; REPEALING CURRENT SECTION 65.0222 AND ADDING NEW SECTION 65.0222; REPEALING CURRENT SECTIONS 65.0223, 65.0224, 65.0225, 65.0226, 65.0227, AND 65.0234 ALL RELATING TO MAINTENANCE ASSESSMENT DISTRICTS.

§65.0201 Purpose and Intent; Citation of Division

- (a) One of the purposes of this Division is to allow for the formation of *districts* in this the City to ~~maintain not only~~ fund *improvements* as and *activities* through the levy of *assessments* upon the *properties* that ~~term is defined in state law but for other types of~~ receive benefits from those *improvements* as ~~defined in this division~~. To accomplish this purpose, the City Council intends that the definition of the ~~term~~ terms *improvement* and *activities* be interpreted liberally.
- (b) [No change in text.]
- (e) It is also the purpose and intent of this Division to ~~establish alternative procedures for the collection of Assessments.~~
- (d) It is also the purpose and intent of this Division to ~~provide a method for the involvement by a representative agency to represent the affected property owners in a District and to participate in the review of proposed plans and specifications for District contracts and in the award of such contracts.~~
- (e)(c) It is also the intent of this Division to provide a method for the City Council to authorize a ~~Non~~ non-profit ~~Corporation~~ corporation to assume responsibility for the administration and day to day management of ~~certain~~ contracts for a ~~District~~ district.
- (d) This Division may be cited as the San Diego Maintenance Assessment District Procedural Ordinance.

§65.0202 **Definitions**

~~The terms~~ Each word or phrase that is defined in Chapter 6, Article 5, this Division 2 ~~are indicated by~~ appears in italicized letters. The For purposes of this Division, the following words and phrases whenever used in Chapter 6, Article 5, Division 2, definitions shall be construed as defined in this section apply:

“Activities” means, but is not limited to, all of the following that benefit properties in the district:

- (a) Promotion of district events;
- (b) Furnishing of music, programming, entertainment, or public art within the district;
- (c) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, landscaping, management of public spaces and other such services supplemental to those normally provided by the City; and
- (d) Other services provided for the purpose of conferring special benefit upon assessed property located in the district, including administrative expenses.

“Administrative expense” includes all incidental and personnel expenses incurred as a result of managing the district, including but not limited to district formation, assessment engineering, annual reporting, budget preparation and monitoring, assessment levying, invoicing, collections, information technology, communications equipment, contract procurement, vendor invoice payments, inspection of improvements and activities as required by contract, personnel, preparation and routing of requests for Council action, legal assistance, rent,

office space, miscellaneous office expenses (i.e., supplies and utilities), and any related overhead or supervisory function incurred by the City or owners' association.

"Assessment" has the meaning contained in California Government Code section 53750, as amended from time to time. means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties located within a district. Assessments levied under this Division are not special taxes.

"Assessment engineer" means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code) hired by a district formation committee or the City to prepare an engineer's report.

"Contract for goods" means an agreement between the City or a non-profit corporation and another party in which the City or the non-profit corporation is the purchaser of articles, commodities, materials, supplies, equipment, or insurance from the other party.

"Contract for services" means an agreement between the City or a non-profit corporation and another party in which the City or non-profit corporation is the purchaser of services from the other party. It includes maintenance contracts.

"District" has the meaning contained in California Government Code section 53750, as amended from time to time. means an area established, and not dissolved, pursuant to this Division, within which property owners pay assessments to fund improvements and activities.

“District management plan” means a plan that outlines the framework of the district and shall include, but is not limited to, all of the following:

- (a) A map of the proposed district in sufficient detail to allow property owners to reasonably determine whether a property is located within the district boundaries;
- (b) The name of the proposed district;
- (c) A description of the boundaries of the district, including the boundaries of any benefit zones;
- (d) The improvements and activities proposed for the district and the maximum cost thereof;
- (e) The proposed source or sources of financing;
- (f) Any proposed rules and regulations to be applicable to the district, including whether the City or an owners’ association will administer the district;
- (g) A list of the properties proposed to be assessed, including the assessor’s parcel numbers; and
- (h) Any other item or matter required by the City to be incorporated into the district management plan.

“Engineer’s Report” means a report prepared by a state certified professional engineer which contains the plans and specifications for the improvement of a specified district, an estimate of the costs of the improvements and maintenance of the improvements, a diagram of the specified district, the assessments proposed to be levied in each parcel within the district, and any other information required

by law determined by the engineer or the City to be relevant with respect to the ~~district.~~an assessment engineer in accordance with article XIII D, section 4(b) of the California Constitution, and shall include, but is not limited to:

- (a) The method and basis of levying the assessment in sufficient detail to allow each property owner to calculate the amount of the assessment to be levied against their property;
- (b) The proportionate special benefit derived by each property;
- (c) The total amount of all special benefit to be conferred upon the properties;
and
- (d) The total amount of general benefit.

“Existing district” means a district established prior to July 1, 2016.

“Fiscal Year” means a twelve-month period commencing on July 1 and ending on the following June 30.

“Improvement” has the meaning contained in California Streets and Highways Code section 22525, as amended from time to time. In addition, improvement includes:

- (1) the provision of services and activities such as security services, promotion of public events, concerts in public areas, economic development, street and sidewalk cleaning, trash removal, and graffiti removal;
- (2) the installation, construction, or acquisition of facilities such as ponds, parking facilities, parking lots, transportation related activities, benches, booths, kiosks, display cases, pedestrian shelters and signs, trash

- receptacles, public restrooms, decorations and banners, public facilities or equipment for security related services, and flood control facilities; and
- (3) ~~the installation, construction, or acquisition of any other facilities that are appurtenant to any of the types of *improvements* defined in section 65.0202 or are necessary or convenient for the *maintenance* or servicing thereof.~~

means the acquisition, construction, installation, or maintenance of any tangible property including, but not limited to, the following:

- (a) Parking facilities;
- (b) Benches, booths, kiosks, display cases, pedestrian shelters, and signs;
- (c) Trash receptacles and public restrooms;
- (d) Lighting and heating facilities;
- (e) Decorations;
- (f) Parks and public spaces;
- (g) Fountains and monuments;
- (h) Planting areas;
- (i) Closing, opening, widening, or narrowing of existing streets;
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area;
- (k) Ramps, sidewalks, plazas, and pedestrian malls;
- (l) Rehabilitation or removal of existing structures; and
- (m) Design, construction and maintenance of community signs.

~~“Maintain or Maintenance” has the meaning contained California Streets and Highways Code section 22531, as amended from time to time. In addition, maintain or maintenance includes the furnishing of property related services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement.~~

~~“Maintenance contract” means an agreement between the City or a non-profit corporation and another party for maintenance of a district.~~

~~“Non-profit corporation” has the meaning contained in United States Code, Title 26, Sections 501(c)(3) and (c)(4), as amended from time to time.~~

~~“Person” has the meaning contained in section 11.0210 of this Code.~~

~~“Public Works Contract” has the meaning contained in Chapter 2, Article 2, of this Code.~~

~~“Sole source” means a person who is the only source from which a procurement is available and there is no adequate substitute.~~

“Owners’ association” means a private non-profit entity which represents, and whose membership includes, the assessed property owners or property owners’ representatives in a district. An owners’ association may be an existing non-profit entity or a newly formed non-profit entity.

“Property” means real property situated within a district.

“Property owner” or “owner” means any person or entity shown as the owner of property on the last equalized secured property tax assessment roll or otherwise known by the City to be the current owner of property.

“Special benefit” has the meaning contained in California Constitution, Article XIII D, Section 2, as amended from time to time. means a particular and distinct benefit over and above general benefits conferred on *properties* located in a *district* or to the public at large. *Special benefit* includes incidental or collateral effects that arise from certain *improvements* or *activities* of *districts* even if those incidental or collateral effects benefit *property* or persons not assessed. *Special benefit* excludes general enhancement of property value.

“Zone” means Zone 3 of the Downtown Landscape and Lighting Maintenance District.

§65.0203 Nonexclusiveness-Non-exclusiveness of Remedies

The remedies provided in this Division for the enforcement of any Assessment *assessment* levied pursuant to this Division are not exclusive, and additional remedies may be provided at any time.

§65.0204 Abandonment of Proceedings

Proceedings for the formation of a District or the levy of Assessments within a District may be abandoned at any time prior to formation of the District or confirmation of the Assessments.

Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the City Council to order the work, shall void or invalidate such procedure or *any assessment* or the cost of the work done.

§65.0205 ~~Effect Upon Other Law~~

~~(a) This Division does not affect any other law relating to the same or any similar subject, but provides additional authority for the installation or construction of Improvements and the Maintenance of Improvements, and other matters pertaining to Districts.~~

~~(b) This Division is to be liberally construed.~~

Alternative Financing Method; No Limit on Other Provisions of Law

This Division provides an alternative method of financing certain *improvements* and *activities*. The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for *improvements* or *activities* or the raising of revenue for the benefit of *properties*.

§65.0206 ~~Determination by Engineer Required~~

~~Before a *district* is formed or amended to include the levy of *assessments* for the installation, construction, acquisition or *maintenance* of a particular type of *improvement*, a state certified professional engineer shall determine in writing via a detailed *engineer's report* that the proposed *improvement* provides a *special benefit* to real property within a proposed or existing *district*.~~

Establishment of a District

A *district* may be established as provided in this Division, in the following manner:

(a) *A district* formation committee, comprised of *property owners* proposing to form a *district*, working with the Mayor or Mayor's designee, shall formulate, vote upon, and submit a draft *district* management plan to the

City for review and comment. Once City staff has commented, an independent assessment engineer hired by the City or the district formation committee will review the plan and prepare an engineer's report consistent with the draft district management plan, article XIII D, section 4(b) of the California Constitution, Sections 53750 through 53758 of the California Government Code, the City of San Diego Municipal Code, and all other applicable laws.

- (b) The draft district management plan shall include the improvements and activities to be funded, the assessment methodology, any benefit zones within the district, the frequency of services, the boundaries of the district, and a statement regarding the desire for the district to be administered by the City or an owners' association.
- (c) City staff shall approve the draft district management plan and engineer's report. After approval of the draft district management plan and engineer's report, City staff shall inform the district formation committee that it may initiate a formal petition drive to demonstrate to the City that appropriate support exists to proceed with the assessment ballot proceeding for formation of the district.
- (d) The City may, at its sole discretion, determine whether or not the City will provide the initial funding for the costs of preparing the draft district management plan and engineer's report.
- (e) Upon the submission of a written petition supporting the approved district management plan, signed by the property owners who own at least 30

percent of the *property* in the proposed *district* or those *property owners* who would pay at least 30 percent of the proposed *assessments* to be generated in the proposed *district*, the City may initiate proceedings to establish a *district*. The petition shall contain a map showing the boundaries of the *district*, a general summary of the types of *improvements* and *activities* that will be provided within the *district*, the exact cost to the respective *property owner* and their proportional weight relative to the total budget proposed for the new *district* which will fund the costs of providing such *improvements* and *activities*.

(f) Prior to submitting the draft *district* management plan and petition to the City, the formation committee shall document that:

- (1) At least two noticed and public meetings were held which included an agenda item for discussion of the *district* proposal;
- (2) A notice was published in a newspaper of general circulation, or publication of similar distribution, which accurately summarized the draft *district* management plan and cost and gave notice of the two public meeting dates;
- (3) Information about the proposed *district* was posted for a minimum of three weeks at a community-accessible public building within the proposed *district* boundary; and
- (4) The officially recognized community planning committee for the area where the proposed *district* is located was informed about the proposed *district* formation.

- (g) Upon verification of the petition by City staff, the City Council may proceed with the formation of the *district* by the adoption of a resolution of intention expressing its intention to establish a *district*.
- (h) The resolution of intention described in subsection (g) above shall contain all of the following:
- (1) A brief description of the proposed *improvements and activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an *owner* to generally identify the nature and extent of the *improvements and activities* and the location and extent of the proposed *district*; and
 - (2) A time and place for a public hearing on the establishment of the *district* and the levying of *assessments*, which shall be consistent with the requirements of San Diego Municipal Code sections 65.0209 and 65.0210.

§65.0207 Alternate Method for Resolution of Intention

The City Clerk may schedule the hearing of the City Council to approve the assessment engineer's report and declare the intention of the City Council to levy and collect Assessments within a District at any time during a regularly scheduled Council meeting.

Engineer's Report

The engineer's report shall contain all of the following:

- (a) A map of the *district*.
- (b) The name of the proposed *district*.
- (c) A description of the boundaries of the proposed *district*, including the boundaries of any benefit zones, in a manner sufficient to identify the affected *properties*. Nothing in this Division prohibits the boundaries of a *district* created pursuant to this Division to overlap with other assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code section 36500 *et seq.*, or the Property and Business Improvement District Law of 1994, California Streets and Highways Code section 36600 *et seq.*
- (d) The general description of *improvements* and *activities* proposed and their estimated maximum cost for each fiscal year.
- (e) The estimated total amount proposed to be expended for administration and operation of the *district* for each fiscal year.
- (f) The proposed source or sources of financing including the proposed method and basis of levying the *assessment* in sufficient detail to allow each *property owner* to calculate the amount of the *assessment* to be levied against their *property*.
- (g) A statement that the *district* will continue until it is disestablished pursuant to San Diego Municipal Code section 65.0221.
- (h) A separation and quantification of the *special benefits* and general benefits, and the proportionate *special benefit* derived by each assessed

property, determined in relationship to the entirety of the cost of providing the improvements and activities.

- (i) A list of the properties to be assessed.
- (j) Any other item or matter required to be incorporated by the Council, the San Diego Municipal Code, or any other applicable law.

§65.0208 Notice of Proposed Assessments; Public Hearing

If the City Council proposes to levy a new or increased assessment, the notice, protest, and hearing procedure shall comply with California Government Code section 53753. There shall be no statements in favor or in opposition by the City, district proponents, or district opponents contained in or accompanying the notice and ballot materials.

§65.0209 Community Planning Groups and Designated Representatives

- (a) ~~In the event a District's boundaries are substantially the same as the boundaries of a community represented by a community planning group that has been established under applicable City guidelines, the community planning group shall be the preferred representative for the property owners within the District for the purposes of Chapter 6, Article 5, Division 2.~~
- (b) ~~In the event the boundaries of a District are substantially not the same as the boundaries of an established community planning group, the property owners within the District may establish their own designated representatives to speak for the property owners.~~

Formation of a District

(a) Following a public hearing in which there is no majority protest, as that term is defined in California Government Code section 53753(e), the City Council may decide to establish the proposed *district*. If the City Council decides to establish the proposed *district*, it shall do so by adopting a resolution of formation that shall contain all of the following:

- (1) A brief description of the proposed *improvements and activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*, which may be made by reference to any plan or map that is on file with the City Clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an *owner* to generally identify the nature and extent of the *improvements and activities* and the location and extent of the proposed *district*.
- (2) The number, date of adoption, and title of the resolution of intention.
- (3) The time and place where the public hearing was held concerning the establishment of the *district*.
- (4) A statement that there was no majority protest.
- (5) A statement that the *properties* in the *district* established by the resolution shall be subject to any future amendments to this Division.

- (6) A statement that the *improvements and activities* to be conferred on *properties in the district* will be funded by the levy of the *assessments*.
- (7) A statement that the revenue from the levy of *assessments* within a *district* shall not be used to provide *improvements or activities* outside the *district* or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning establishment of the *district*.
- (8) A finding that the *property* within the area of the *district* will receive *special benefits* as a result of the *improvements and activities* funded by the proposed *assessments*.
- (b) Prior to adopting the resolution of formation, the City Council may modify the *engineer's report*, or any portion thereof, so long as the modification does not result in any *property owner* paying a higher *assessment* than indicated on that *property owner's* ballot or result in an *assessment* being levied on any *property* for which the *property owner* was not balloted.
- (c) The adoption of the resolution of formation shall constitute the levy of an *assessment* in each of the fiscal years for the life of the *district*.
- (d) The *improvements and activities* in the *district* may not commence any sooner than six months after City Council adoption of the resolution of formation so that the necessary amount of *assessment* funds may accrue to implement the *improvements and activities*.

§65.0210 ~~Meetings Between City and Property Owners; Notice~~

- (a) ~~Representatives of the City Manager shall conduct at least one (1) notice meeting with property owners within each District to discuss the proposed Improvements and level of Maintenance for each District for the following Fiscal Year. The City Manager shall use his or her best efforts to contact either orally or in writing the duly recognized community planning group or designated representatives of the District, and community newspapers serving the area, if any.~~
- (b) ~~For any Contract for Goods, Contract for Services, or Public Works Contract awarded by the City, or Maintenance provided by the City, or Improvement installed or provided by the City pursuant to this Division, representatives of the City Manager shall attempt to meet on a regular basis with the relevant community planning group or designated representatives of each District to evaluate the performance of the contractor or the City and to advise the representatives of the City Manager regarding Improvements and regular Maintenance for each District.~~
- (c) ~~Upon receipt of bids or proposals for a Contract for Services or Public Works Contract, representatives of the City Manager or the designated Non-profit Corporation shall meet with the relevant community planning group or designated representatives of each District and property owners within the District to review the bids or proposals.~~

City Clerk to Record Notice and Map of District

Following adoption of a resolution of formation pursuant to San Diego Municipal Code section 65.0209, the City Clerk shall record a notice and map of the *district*.

§65.0211 ~~City Council Review~~

~~The City Manager shall finalize the plans and specifications for the Improvements and Maintenance of each District administered by the City, taking into consideration any comments received from the relevant community planning group or designated representatives of each District, and from property owners within the District, and the budget for such Improvements and Maintenance. The City Manager shall also order the preparation of an Engineer's Report and shall docket for City Council review the Engineer's Report and a resolution of intention to levy the Assessments for each District.~~

Existing Districts

Every *existing district* is declared valid, effective, and in compliance with this Division. *Existing districts* are subject to this Division rather than any provision of prior law. Adoption of a resolution levying *assessments* in an *existing district* for a fiscal year beginning on or after July 1, 2016 shall authorize and constitute the levy of *assessments* for the life of the *existing district*.

§65.0212 Support of Property Owners for Administration by Non-Profit Corporations

- (a) ~~Except as provided in Section 65.0212(b) or 65.0212(e), any Non-profit Corporation wishing to establish the right to administer Contracts for Goods and Contracts for Services for a District shall provide written documentation to the City Manager verifying that property owners representing at least a majority of the parcel area of the relevant District support the Non-profit Corporation assuming responsibility for administration of Contracts for Goods and Contracts for Services for the District. The written documentation shall contain the name, signature, address and parcel number of each property owner signing the documentation. The City Manager shall verify the contents of the documentation.~~
- (b) ~~Any Non-profit Corporation wishing to establish the right to administer Contracts for Goods or Contracts for Services for the Zone shall submit a notice to the property owners within the Zone that it wishes to establish such administration. The notice shall also contain a ballot that allows property owners to vote on whether they support or oppose having the Non-profit Corporation administer Contracts for Goods or Contracts for Services for the Zone. Each ballot shall contain the name, address, and parcel number of the relevant property owner, a place for the property owner to register his or her support or opposition to such administration and a place for the property owner to sign the ballot. The ballots shall be returned to the City Manager. The City Manager shall tabulate the ballots.~~

All costs of mailing and printing the ballots, and all costs incurred by the City in administering mailing, printing, and tabulating the ballots shall be paid by the Non-profit Corporation. If a majority of property owners returning ballots, weighted by the dollar amount of their assessments, vote in favor of the Non-profit Corporation administering Contracts for Goods and Contracts for Services, the Non-profit Corporation may assume such administration thirty (30) days after the tabulation of the ballots.

(1) The Non-profit Corporation shall administer the Zone for one (1) year.

(2) After one year, if the Non-profit Corporation desires to continue administering Contracts for Goods and Contracts for Services for the Zone, the Non-profit Corporation shall submit in writing a request to the City Manager to continue such administration. The City Manager shall submit the Non-profit Corporation's request to the City Council for review. The City Council may authorize the Non-profit Corporation to continue the administration of the Zone for additional time. If a majority of property owners returning ballots, weighted by the dollar amount of their assessments, vote in favor of the Non-profit Corporation administering Contracts for Goods and Contracts for Services for the Zone, the Non-profit Corporation shall assume such administration within thirty (30) days of the tabulation of the ballots.

(e) Upon the submission of the documentation required pursuant to Section 65.0212(a) or upon approval by the property owners of a District pursuant to Section 65.0212(b), the City Manager shall docket for City Council review a resolution authorizing the City Manager to enter into the agreement with the Non-profit Corporation to administer Contracts for Goods and Contracts for Services for such District or for the Zone.

(1) The agreement shall provide that the Non-profit Corporation agrees to indemnify, defend, and hold the City free and harmless from and against any and all claims, demands, liens, or judgments for death of or injury to any person or damage to any property whatsoever alleged to be caused, or caused, by any act or omission of the Non-profit Corporation or any officer, contractor, agent, or employee of the Non-profit Corporation.

(2) The agreement shall provide that the Non-profit Corporation shall obtain a comprehensive public liability insurance policy satisfactory to the City Manager and the City Attorney, naming the City as an additional insured. The Non-profit Corporation shall provide the City Manager a copy of a certificate of such insurance each year.

(3) The agreement shall provide that the Non-profit Corporation shall maintain worker's compensation insurance for its employees.

(4) The agreement shall provide for administration of any Contract for Services through on-site inspections by a representative of the

~~Non-profit Corporation. The Non-profit Corporation shall submit a report to the City indicating that such on-site inspections have been completed or any bill or invoice received for goods or services received pursuant to a Contract for Goods or Contract for Services. Upon submission of such report, bills, or invoices, the City will be authorized to pay for work done by the Maintenance contractor or for the goods received.~~

- (5) ~~The agreement shall provide that the City Manager shall conduct at least four (4) on-site inspections of the District or the Zone each year. In the event the City Manager determines from such inspections that the District or the Zone is not being properly administered by the Non-profit Corporation, the City Manager shall report such findings to the City Council. The cost of any inspections conducted by the City Manager shall be paid by the District or the Zone.~~
- (6) ~~The agreement shall provide that the Non-profit Corporation agrees that it shall not have a financial interest in any contract awarded for such District or the Zone.~~
- (7) ~~The agreement shall provide that the Non-profit Corporation agrees to conduct at least one (1) noticed meeting with property owners within the District or the Zone and to attempt to meet on a regular basis with the relevant community planning group or designated representatives of the District or the Zone, and property~~

owners within the District or the Zone, to finalize plans and specifications for the Improvements and Maintenance of the District or the Zone, to evaluate the performance of any Maintenance contractor for the District or the Zone, and to advise the Non-profit Corporation regarding the Improvements and regular Maintenance for the District or the Zone. For any such meeting, the Non-profit Corporation shall use its best efforts to contact either orally or in writing the relevant community planning group or designated representatives of the District or the Zone, and community newspaper, if any.

(8) The agreement shall provide that the Non-profit Corporation is required to submit to the City Manager a budget for the Improvements and Maintenance for the District or the Zone no later than March 1 of each year for the following Fiscal Year.

(9) The agreement shall provide that the Non-profit Corporation shall maintain separate books and records for the District or the Zone which shall be available for audit at any time during normal business hours and as often as the City deems necessary. All records shall be made available within the City of San Diego and the City or its designee shall be allowed to audit, examine, and make excerpts from such data pertaining to all matters covered by this agreement. The Non-profit Corporation shall maintain such books and records for a period of three years following completion

~~of the agreement. The District or Zone shall pay for the costs of the audit.~~

~~(10) The agreement between the City and the Non-profit Corporation may be renewed, at the City's sole option, each year.~~

~~(d) After receiving the budget for a District or the Zone from a Non-profit Corporation, the City Manager shall order the preparation of an Engineer's Report. The City Manager shall also docket for City Council review the Engineer's Report and a resolution of intention to levy the Assessments for the District or the Zone.~~

~~(e) The agreement shall provide that failure of the Non-profit Corporation to comply with any term or conditions of the agreement may result in termination of the agreement.~~

~~(f) The City Council may terminate the agreement with the Non-profit Corporation at any time provided:~~

~~(1) a public hearing is held on the City Council's intention to terminate the agreement with the Non-profit Corporation;~~

~~(2) the Non-profit Corporation is provided thirty (30) calendar days' notice of the public hearing on the City Council's intention to terminate the agreement;~~

~~(3) a notice of the public hearing is mailed at least fifteen (15) calendar days prior to the public hearing to each property owner within the District or the Zone; and,~~

- (4) ~~the City Council determines at the conclusion of the public hearing that it is in the best interests of the District or the Zone to terminate the agreement with the Non-profit Corporation. Upon the termination of the agreement with the Non-profit Corporation, the City Manager shall resume administration of Contracts for Goods and Contracts for Services for the District or the Zone.~~

Property Owner Representatives

- (a) Property owners may establish representatives for the purposes of communicating with the City on matters within their district.
- (b) In the event a district is managed by the City and the district's boundaries are substantially the same as the boundaries of a community represented by a community planning group that has been established under applicable City guidelines, the community planning group shall be the preferred property owner representative for the property owners within the district for the purposes of Chapter 6, Article 5, Division 2. The community planning group may form a committee and designate that committee as the property owner representative in lieu of the community planning group acting as the property owner representative.
- (c) In the event the boundaries of a district managed by the City are substantially not the same as the boundaries of an established community planning group, the property owners within the district may establish their own advisory group made up of designated representatives.

§65.0213 City Award of Contracts

- (a) ~~For the award of any Public Works Contract, Contract for Goods, and Contract for Services, other than Maintenance Contracts, by the City on behalf of a District, the City Manager shall follow the provisions of Sections 22.3101, 22.3102, 22.3103, 22.3104, 22.3105, 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223 of this Code.~~
- (b) ~~For the award of any Maintenance Contract by the City on behalf of a District, the City Manager shall follow the provisions of Sections 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223 of this Code. Notwithstanding the provisions of Sections 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223, a Maintenance Contract for a District may be awarded to other than the low acceptable bidder if the City Manager receives a protest from the relevant community planning group or designated representatives of a District, or other property owners within the District, in accordance with the provisions of Section 65.0213(b)(1) or~~
- ~~(2).~~
- (1) ~~In order to protest the award, the relevant community planning group or designated representatives of the District must submit to the City Manager, no later than forty five (45) calendar days after the announcement of the determination of the low acceptable bidder, a written protest stating the reasons for their opposition to~~

~~the award to the low acceptable bidder and the reasons in support of awarding to other than the low acceptable bidder. In the event the District has fewer than five hundred (500) parcels located within its boundaries, then the written protest of the community planning group or designated representatives of the District must be signed by property owners representing at least twenty five percent (25%) of the parcel area of the District.~~

~~(2) In order for other property owners within the District to protest the award, the property owners must submit to the City Manager, no later than forty five (45) calendar days after the announcement of the determination of the low acceptable bidder, a written protest signed by property owners representing at least twenty five percent (25%) of the parcel area of the District, stating the reasons for their opposition to the award to the low acceptable bidder and the reasons in support of awarding to other than the low acceptable bidder.~~

~~(e) In the event the City Manager receives a valid written protest pursuant to Sections 65.0213(b)(1) or (2), the City Manager shall submit the Maintenance Contract for review and award by the City Council. After reviewing the protests and hearing any public testimony, and upon a determination that the Maintenance Contract should be awarded to other than the low acceptable bidder, the City Council may award the contracts to other than low acceptable bidder.~~

Collection of Assessments

The collection of the assessments levied pursuant to this Division shall be made at the time and in the manner set forth by the City Council in the resolution of formation described in San Diego Municipal Code section 65.0209. A method for charging interest and penalties for delinquent payments of assessments may also be prescribed in the resolution of formation. Assessments may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this Division may be charged interest and penalties.

§65.0214 ~~Contracts Awarded by Non-Profit Corporations~~

- (a) ~~Contracts for Goods and Contracts for Services administered by a Non-profit Corporation shall be awarded by the Non-profit Corporation on the basis of the low acceptable bid that best meets the respective District's or the Zone's requirements as provided below:~~
- (1) ~~When a Contract for Goods or Contract for Services provides for an expenditure greater than five thousand dollars (\$5,000), but equal to or less than ten thousand dollars (\$10,000), the Non-profit Corporation shall seek competitive prices either orally or in writing.~~
 - (2) ~~When a Contract for Goods or Contract for Services provides for an expenditure greater than ten thousand dollars (\$10,000), but equal to or less than fifty thousand dollars (\$50,000), the Non-~~

~~profit Corporation shall solicit written price quotations from at least five (5) potential sources.~~

~~(3) When a Contract for Goods or Contract for Services provides for an expenditure greater than fifty thousand dollars (\$50,000), the Non-profit Corporation shall advertise for sealed proposals.~~

~~(4) The following Contracts for Goods or Contracts for Services are not required to be competitively bid by a Non-profit Corporation:~~

~~(A) a Contract for Goods or Contract for Services that provides for an expenditure of less than five thousand dollars (\$5,000);~~

~~(B) a Contract for Goods or Contract for Services that is available from a Sole Source only.~~

~~(b) A Non-profit Corporation may consider the following factors in evaluating whether a bid or proposal best meets the respective District's or the Zone's requirements and gains the best economic advantage for the District or the Zone: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (including the costs associated with proprietary invention), experience and responsibility of the bidder, and any additional factors the Non-profit Corporation deems relevant.~~

~~(e) Notwithstanding the provisions of Section 65.0214(a) and (b), a Maintenance Contract for a District or the Zone may be awarded to other than the low acceptable bidder if the Non-profit Corporation receives a~~

protest from the relevant community planning group or designated representatives of a District or the Zone, or other property owners within the District or the Zone, in accordance with the provisions of Section 65.0214(c)(1) or (2).

(1) In order to protest the award, the relevant community planning group or designated representatives of the District or the Zone must submit to the Non-profit Corporation, no later than forty five (45) calendar days after the announcement of the determination of the low acceptable bidder, a written protest stating the reasons for their opposition to the award to the low acceptable bidder and the reasons in support of awarding to other than the low acceptable bidder. In the event the District or the Zone has fewer than five hundred (500) parcels located within its boundaries, then the written protest of the community planning group or designated representatives of the District or the Zone must be signed by property owners representing at least twenty five percent (25%) of the parcel area of the District or the Zone.

(2) In order for other property owners within the District or the Zone to protest the award, the property owners must submit to the Non-profit Corporation, no later than forty five (45) calendar days after the announcement of the low acceptable bidder, a written protest signed by property owners representing at least twenty five percent (25%) of the parcel area of the District or the Zone, stating the

reasons for their opposition to the award to the low acceptable bidder and the reasons in support of awarding to other than the low acceptable bidder.

- (d) In the event the Non-profit Corporation receives a valid written protest pursuant to Sections 65.0214(c)(1) or (2), the Non-profit Corporation shall conduct a noticed meeting with property owners in the District or the Zone to review any protests and hear any public testimony. Notices shall be given by notifying the relevant community planning group or designated representatives of the District or the Zone, and by notifying community newspapers serving the area, if any. After reviewing any protest and hearing any public testimony, and upon a determination that the Maintenance Contract should be awarded to other than the low acceptable bidder, the Non-profit Corporation may award the contract to other than the low acceptable bidder.

Validity of Assessments; Contests

The validity of an assessment levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the district and levying the assessment is adopted pursuant to San Diego Municipal Code section 65.0209 or, in the case of existing districts, upon adoption of the resolution pursuant to San Diego Municipal Code section 65.0211. Any appeal from a final judgment in any action or proceeding shall be perfected by the appellant within 30 days after the entry of judgment.

§65.0215 **District Modification; Public Hearing Required**

(a) The City Council may modify a *district* by adopting a resolution after conducting one public hearing on the proposed modifications. The City Council may only make minor modifications to the *improvements and activities* to be funded with the revenue derived from the levy of the *assessments* to the extent that those minor modifications are consistent with the *engineer's report*. The City Council may modify the boundaries of the proposed *district*, but only if the modification does not result in additional *property* being included in the proposed *district*. Notice of the public hearing and the proposed modifications shall be accomplished by a first-class mailing to all affected *property owners* of the resolution of intention to modify the *district*, as well as an official notice of the public hearing regarding the proposed modifications. If the modification includes the levy of a new or increased *assessment*, as defined in California Government Code section 53750, or if the modification is not consistent with the *engineer's report*, then the City Council shall comply with California Government Code section 53753.

(b) The City Council shall adopt a resolution of intention to modify the *district* which states the proposed modification prior to the public hearing. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention to modify the district and not less than 45 days after the mailing of the notice as referenced in section 65.0215(a).

§65.0216 **Establishment, Modification, or Disestablishment of Benefit Zones**

All provisions of this Division applicable to the establishment, modification, or disestablishment of a *district* apply to the establishment, modification, or disestablishment of benefit zones. In order to establish, modify, or disestablish a benefit zone, the Council shall follow the procedure to establish, modify, or disestablish a *district*.

§65.0217 **Administration by an Owners' Association**

(a) Consistent with California Streets and Highways Code section 36614.5, the *owners' association* is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. An *owners' association* shall comply with the Ralph M. Brown Act, California Government Code section 54950 *et seq.*, at all times when matters within the subject matter of the *district* are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code section 6250 *et seq.*, for all documents relating to *improvements and activities* of the *district*. Board members, officers, and members of the *owners' association* are intended and understood to represent and further the interest of the *property owners* located within the *district*. Each *property owner* or *property owner's* representative paying the *assessment* has the right to vote in, and seek nomination in, annual elections to the board of directors of the *owners' association*.

- (b) If the City Council determines that the *district* will be administered by an *owners' association*, then the City Council may adopt a resolution approving an agreement with an *owners' association* and stating that an *owners' association* shall be responsible for administering all contracts necessary to provide the *improvements* and *activities* within the *district* as well as managing the day to day operations of the *district*.
- (c) Upon the submission of a written petition, signed by the *property owners* who own at least 30 percent of the *property* in the *district* or those *property owners* who pay at least 30 percent of the *assessments* generated in the *district*, the City may initiate proceedings to change the administrator of a *district*. If the *district* is currently administered by the City, the petition shall include a statement that the *property owners* desire to have an *owners' association* administer the *district*. If the *district* is currently administered by an *owners' association*, the petition will include a statement as to whether the *property owners* desire the City or another *owners' association* to administer the *district*.
- (1) After City staff verifies the petition sufficiency, the City Council may adopt a resolution of intention expressing its intention to change administrators of the *district*. If the *district* is currently administered by an *owners' association*, the resolution of intention shall include a statement seeking applicants from non-profit corporations who desire to act as the *district's owners' association*. The resolution of intention shall also set forth a time and place for

a public hearing on the matter of changing the administrator for the district.

(2) After the public hearing, the City Council may, but is not required to, change the administrator for the district by the adoption of a resolution changing administrators.

(3) If there is any gap between owners' associations in administration of a district, the City shall administer the district until the new owners' association takes over administration.

(d) Nothing in this section shall be construed as to limit the City's ability to change the administrator for the district at any time without a petition of the property owners.

§65.0218

Terms of Agreement between the City and the Owners' Association

(a) Notwithstanding any other provision of the San Diego Municipal Code, the agreement between the City and the owners' association for administration of the district may be awarded without a competitive process.

(b) The agreement with the owners' association shall require the owners' association to indemnify, defend, and hold the City free and harmless from and against any and all claims, demands, liens, or judgments for death of or injury to any person or damage to any property whatsoever alleged to be caused, or caused, by any act or omission of the owners' association or any officer, contractor, agent, or employee of the owners' association.

- (c) The agreement shall require the *owners' association* to obtain a comprehensive public liability insurance policy satisfactory to the City Manager and the City Attorney, naming the City as an additional insured. The *owners' association* shall provide the City Manager a copy of a certificate of such insurance each year and, upon request, shall provide the City Manager a complete copy of the insurance policy.
- (d) The agreement shall require the *owners' association* to maintain worker's compensation insurance for its employees.
- (e) The agreement shall provide that neither the *owners' association* nor any of its board members shall have a financial interest in any contract awarded for the *district*.
- (f) The agreement shall provide that the *owners' association* agrees to conduct at least one noticed meeting per year which shall include the *property owners*, any applicable *property owners' designated representatives* pursuant to San Diego Municipal Code section 65.0212, and City staff, to discuss the budget, *improvements*, and *activities* for the following fiscal year.
- (g) The agreement shall require the *owners' association* to hold at least three other noticed meetings per year, in addition to the one required in section 65.0218(f), open to the public and *property owners* within the *district* to receive comments on all matters related to the *district*, including input on bids or proposals received by the *owners' association* for any contracts for *improvements* and *activities* of the *district*, evaluation of the performance

of any contractor for the *district*, and advice to the *owners' association* regarding the *improvements and activities* for the *district*.

- (h) The agreement shall require the *owners' association* to submit to the City Manager a prospective annual report pursuant to section 65.0220 for the *improvements and activities* for the *district* no later than April 1 of each year for the following *fiscal year*. The City Manager may modify the annual budget prior to submitting it to the City Council for consideration.
- (i) The agreement shall require the *owners' association* to maintain separate books and records for the *district* which shall be available for audit at any time during normal business hours and as often as the City deems necessary. All records shall be made available within the City of San Diego, and the City or its designee shall be allowed to audit, examine, and make excerpts from such data pertaining to all matters covered by the agreement. The *owners' association* shall maintain such books and records for a period of three years following completion of the agreement. The *district* shall pay for the costs of any audit performed by or at the direction of the City.
- (j) The agreement shall require the *owners' association* to timely provide an audited financial statement of all reimbursements and working capital advances paid to the *owners' association* with *district* funds within the timeframe specified in the agreement. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an independent Certified Public Accountant

(CPA) as selected or approved by the City in accordance with Generally Accepted Auditing Standards (GAAS).

- (k) The agreement shall provide that failure of the owners' association to comply with any terms or conditions of the agreement may result in termination of the agreement.
- (l) The agreement shall provide that if the owners' association receives revenue directly generated by activities carried out with any district assessment funds, then a portion of that revenue must be returned to the district account based on the district's participation in the funding of the activity generating the revenue.
- (m) The agreement shall have a term not to exceed five years.
- (n) The agreement shall allow the City Manager to terminate the agreement for cause with 30 days' written notice to the owners' association. The City Council may terminate the agreement for convenience by resolution after first adopting a resolution of intention to terminate and giving 30 days' written notice of a public hearing on the matter to the owners' association.

§65.0219 Assessment Recorded; Notice; Late Charge

- ~~(a) After the Assessments for a District are confirmed by the City Council, the City Clerk shall transmit to the City Manager the recorded map of the District and the Assessments as confirmed by the City Council.~~
- ~~(b) The City Manager shall maintain the map and Assessments in an accessible location and shall fix a day not less than thirty(30), nor more~~

~~than sixty(60), calendar days from the billing of the Assessments, after which all Assessments remaining unpaid shall become delinquent.~~

~~(1) After the billing of the Assessments, the City Manager shall send an Assessment notice to each property owner whose property is liable for the Assessment, stating that the Assessment for the property is due and payable and that the penalty for delinquency, as specified, may be added to the total Assessment.~~

~~(2) In the event of a delinquency, an administrative late charge equal to fifty percent (50%) of the Assessment, but not to exceed twenty five dollars (\$25.00), shall be added to the total amount of the Assessment and the delinquency due.~~

~~(e) From the date a District map and an Assessment roll are recorded, all affected property owners shall be deemed to have notice of the contents of the Assessment roll.~~

~~(1) Upon recording, each Assessment contained in the Assessment roll shall become due and payable.~~

~~(2) Each Assessment shall be a lien upon the property against which it is made, paramount to all other liens, except liens for prior Assessments and taxation, and shall only be discharged by payment of the Assessment, including late charges, if any, or by redemption of the property after sale for delinquency.~~

Meetings between City and Property Owners; Notice

- (a) Representatives of the City shall participate in or conduct at least one publicly noticed meeting with the *property owner* representatives of the *district* or, absent *property owner* representatives, the *property owners* within each *district* to discuss the budget, *improvements*, and *activities* for the following *fiscal year*.
- (b) For any *contracts* awarded by the City, or *activities* provided by the City, or *improvement* installed or provided by the City pursuant to this Division, representatives of the City should meet on a regular basis with the advisory group or, absent an advisory group, *property owners* within the *district* to evaluate the performance of the contractor or the City and to advise the representatives of the City regarding *improvements* and *activities* for each *district*.
- (c) Upon receipt of bids or proposals for a *contract* for *improvements* or *activities*, representatives of the City should meet with the *property owner* representatives of the *district* or, absent *property owner* representatives, the *property owners* within the *district* to review the bids or proposals.

§65.0220 Waiver of Delinquent Payments

- (a) ~~If notice of an Assessment is sent to an incorrect address and that Assessment becomes delinquent, upon application of the property owner, the City Manager may waive the late charge for delinquency or refund the late charge if it has already been paid.~~

- (b) ~~In the event commencement of the Maintenance proposed in a District, through circumstances beyond the control of the City, is delayed past the delinquency date established by the City Manager as provided in Section 65.0220, the Council, by resolution, may amend the established delinquency date and set a new delinquency date to be not less than thirty (30) calendar days from the date of commencement of the Maintenance.~~
- (1) ~~The resolution shall order and authorize the refunding or cancellation of all late charges collected or due based on the delinquency date originally established by the City Manager and shall require a new notice be mailed by the City Manager to each affected property owner.~~
- (2) ~~This procedure for amending the delinquency date shall not be applied where the alternate method for collecting an Assessment under Section 65.0221 is used.~~

Annual Report

- (a) The City Council shall approve a prospective annual report for each *fiscal year*, except the first year, for which *assessments* are to be collected to pay the costs of the *improvements* and *activities* described in the report.
- (b) The report shall be consistent with the *engineer's report*, filed with the City Clerk after City Council approval but prior to August 10 each year; refer to the *district* by name, specify the *fiscal year* to which the report applies, and, with respect to that *fiscal year*, shall contain all of the following information:

- (1) The *improvements* and *activities* to be provided for that fiscal year;
 - (2) An estimate of the cost of providing the *improvements* and *activities* for that fiscal year;
 - (3) The method and basis of levying the *assessment* in sufficient detail to allow each *property owner* to estimate the amount of the *assessment* to be collected from him or her for that fiscal year;
 - (4) The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year;
 - (5) The estimated amount of any contributions to be made from sources other than *assessments* collected pursuant to this Division;
and
 - (6) A list of parcels within the *district* as indicated on the last equalized secured property tax assessment roll.
- (c) The City Council may approve the report as filed or may modify any portion of the report and approve it as modified.

§65.0221 ~~Alternate Method for Collecting the Assessment~~

- ~~(a) If, prior to the confirmation of Assessments, the City enters into an agreement with the County of San Diego for collection and enforcement of Assessments pursuant to the California Government Code, Assessments for those parcels appearing on the last equalized tax roll of the County and for which a tax bill is issued by the County Tax Collector, shall be so collected and enforced.~~

- (1) ~~Notwithstanding any other provisions of this Division, notice by the County Tax Collector of any assessments to be included with the general tax for the City and County shall be sufficient for the Assessment notice.~~
- (2) ~~All Assessment collected by and payable to the County Tax Collector shall be subject to the same penalties and enforcement provisions relating to general taxes.~~
- (b) ~~The City Manager shall furnish each year, in accordance with the agreement with the County Tax Assessor, the necessary information regarding the amount of the Assessments, or installments thereof, that are to be billed for and collected by the County Tax Assessor during the taxpaying period.~~
- (c) ~~All Assessments levied under this Division which are not collected or enforced pursuant to the agreement with the County shall be subject to all other enforcement provisions of this Division or any other enforcement provisions or remedies available at law.~~

Disestablishment of District; Procedures

- (a) Any *district* established pursuant to the provisions of this Division may be disestablished by resolution of the City Council after a public hearing on the disestablishment of the *district*.
- (b) The City Council may, at its sole discretion, initiate the process to dissolve a *district*.

(c) Section 65.0221(b) notwithstanding, *property owners* interested in dissolving a *district* shall provide a written petition to the City Manager verifying that *property owners* who own at least 30 percent of the *property* in the *district* or those *property owners* who pay at least 30 percent of the *assessments* generated in the *district*, support dissolution of the *district*.

(1) The petition shall contain the name, signature, address, and parcel number of each *property owner* signing the petition. The City Council will not act on a resolution to dissolve a *district* until the City Manager or his designee has verified the contents of the petition.

(2) All costs of mailing and printing the petition, and all costs incurred by the City in administering, mailing, printing, and tabulating the petition and providing notice, shall be paid from *district assessments*.

(d) Upon verification of the petition, the City Council shall adopt a resolution noticing the public hearing on the subject of dissolution. The resolution shall state the time and place of the public hearing and shall contain a proposal to dispose of any assets acquired with the revenues of the *assessments* levied within the *district*. The notice of the hearing on disestablishment shall be given by mail to the *owner* of each *property* subject to *assessment* in the *district*. The City Council shall conduct the public hearing not less than 30 days after the mailing of the notice to the

property owners. The public hearing shall be held not more than 60 days after the adoption of the resolution noticing the public hearing.

§65.0222 Notice of Sale of Delinquent Property

- (a) In the event the total amount of a delinquency or delinquencies for a property exceeds three thousand dollars (\$3,000), the City Manager shall undertake the following procedures:
- (1) Not less than one (1) year, but not more than fourteen (14) months after the date of any delinquency, the City Manager shall begin publication of a notice of sale for any property upon which any Assessment has not been paid, which publication shall be made by two (2) insertions in the city official newspaper.
 - (2) The notice of sale shall contain a description sufficient to identify each lot or parcel of delinquent property, the name of the owner, the amount of any Assessment, the delinquency penalties, and the portion of the costs of sale attributable to such lot or parcel.
 - (3) The notice shall also contain a statement that unless any delinquent Assessment, penalty, and cost is paid, the property upon which the Assessment is a lien will be sold to the City by operation of law at a sale to take place at a location and at a time specified in the notice. The City Manager shall also mail the same notice to the owner of each lot or parcel of delinquent property.
- (b) In the event the total amount of any delinquency for a property are equal to or less than three thousand dollars (\$3,000), the City Manager, at his or

her discretion, may undertake the procedures provided in Sections 65.0222(a)(1) and (2).

Disestablishment; Refund of Assessments

Upon disestablishment of the district and after all outstanding debts, including administrative costs incurred on behalf of the *district* and the costs of disestablishing the *district*, are paid, any remaining revenues derived from the levy of *assessments*, or derived from the sale of assets acquired with the revenues, shall be refunded to the *property owners* then located within the *district* in which *assessments* were levied. Such refunds shall be distributed by applying the same method and basis that was used to calculate the *assessments* collected in the fiscal year in which the *district* is disestablished. If the disestablishment occurs before an *assessment* is collected for the fiscal year, the method and basis that was used to calculate the *assessments* collected in the immediate prior fiscal year shall be used to calculate the amount of any refund. All outstanding *assessment* revenue collected after disestablishment or expiration shall be spent on *activities* specified in the *engineer's report*. All general benefit contributions shall be returned to their originating fund. Interest earned on any reserve shall be returned to the City's originating fund.

§65.0223 Payment of Delinquent Assessments

At any time after the delinquency date, but prior to the sale by operation of law of any lots or parcels of delinquent property, any Person may pay any delinquent Assessment, penalties, and publication and administrative costs. The costs shall include the cost of advertising. The penalties, less costs, shall be placed in the

~~Special Assessment District Delinquency Fund and distributed in accordance with the provisions of San Diego Municipal Code section 61.2392.~~

§65.0224 Sale of Delinquent Property

~~At the time fixed in the notice of sale of delinquent property, the City Manager shall execute a certificate of sale to the City. This certificate shall refer to the proceedings, shall state that the property was sold to the City for nonpayment of delinquent Assessments which were a lien on the property, shall describe the property sold, and shall state the amount for which the property was sold to the City, which amount shall be the sum of any delinquent Assessment, the penalties, and the publication and administrative costs. The certificate shall be kept on file by the City Manager.~~

§65.0225 Redemption of Delinquent Property

- (a) ~~At any time after the date of sale of delinquent property, by operation of law, but prior to the issuance and delivery of a deed to the property sold, any property sold under the provisions of this Division may be redeemed by payment to the City Treasurer of the amount for which the property was sold, together with a penalty of two thirds(2/3) of one percent(1%) of the total amount per month, and such other penalties as may be payable as provided in this Division. The two thirds (2/3) of one percent(1%) penalty shall be added on the first day of each month following the date of the sale of the property.~~
- (b) ~~Upon redemption of any parcel or lot of property, the City Manager shall enter that fact and the date of redemption upon the certificate of sale.~~

§65.0226 Execution of Deed to Delinquent Property

- (a) ~~If a property has not been redeemed pursuant to Section 65.0225 the City Manager shall, after the expiration of three (3) years but before the expiration of four (4) years from the date of sale, execute to the City a deed of property sold. The deed shall recite the matters contained in the certificate, and the fact that no Person has redeemed the property.~~
- (b) ~~At least thirty (30) calendar days before execution of the deed, the City Manager shall cause to be served upon the owner of the property, and upon any occupant of the property, if it is occupied, a written notice setting forth:~~
 - (1) ~~a description of the property;~~
 - (2) ~~that the property has been sold for a delinquent Assessment or Assessments (specifying the Maintenance for which the Assessment was levied);~~
 - (3) ~~the amount for which the property was sold;~~
 - (4) ~~the amount necessary to redeem the property at the time of giving notice; and~~
 - (5) ~~the date when the City Manager will deed the property to the City.~~
- (c) ~~If the owner cannot be found, the notice shall be posted in a conspicuous place upon the property at least thirty (30) days before the date for execution of the deed. The Person actually serving the notice shall file with the City Manager a declaration showing that the required notice has been given and, if the notice was not served on the owner of the property~~

~~personally, that due diligence was used to find the owner. The City Manager shall receive and file such declaration.~~

- ~~(d) If the property is redeemed after declarations are filed, the Person retaining the property shall pay the City Manager, in addition to the other amounts required, fifteen dollars (\$15.00) for the service of notice and the preparation of the declaration. No deed for any property sold for delinquent Assessments shall be executed by the City Treasurer until all the provisions of this Division have been complied with.~~
- ~~(e) The deed of the City Treasurer shall be prima facie evidence of the truth of all matters recited therein, of the regularity of all proceedings prior to the execution thereof, and of title to the property in the grantee.~~

§65.0227 ~~Limitation of Actions~~

~~The validity of any Assessment levied under this Division shall not be contested in any action or proceeding unless the action is commenced within thirty(30) calendar days after the time the City Council has confirmed the Assessment.~~

§65.0234 ~~Authority To Refund Surplus~~

- ~~(a) Notwithstanding the limitations of Streets and Highways Code section 22656, in the event of a surplus in an improvement fund in excess of current need, the Council may declare the amount surplus.~~
- ~~(b) When the Council declares a surplus, the Manager may offer to owners of record a proportional refund of their assessment that exceeds the amounts~~

~~necessary to cover the needs of the fund for the next fiscal year or any longer time that the Council determines by resolution.~~

- (e) ~~Surpluses of owners who do not request refunds will be carried forward to the next and subsequent annual assessments.~~

ARW:mcm
04/12/2016
Or.Dept: Econ. Devel.
Doc. No.: 1243626_2

Passed by the Council of The City of San Diego on MAY 24 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 01 2016

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 25 2016

, and on

JUN 01 2016

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20653